

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00246
Petitioner: Elena & Gonzalo Gonzalez
Respondent: Department of Local Government Finance
Parcel #: 006-14-20-0129-0010
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in the spring of 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$135,500, and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. A hearing was held on November 19, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 4743 East 26th Place, Lake Station, Hobart Township, Lake County.
6. The subject property is a single-family home on 0.310 acres of land.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Value of subject property as determined by the DLGF:
Land \$20,800 Improvements \$114,700
 - b) Assessed Value requested by Petitioner:
Land \$20,000 Improvements \$74,000

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Gonzalo Gonzalez, Owner
Elena Gonzalez, Owner
Efrain Fontanez, Witness

For Respondent: Diane Spenos, DLGF Hearing Officer

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The assessment is too high. *E. Gonzalez argument*. Petitioner has attempted to list and sell the house for \$119,900, and the highest offer was \$93,000 in late 2003. *E. Gonzalez testimony; Pet'r Ex. 4*. More recently, the Petitioner listed the property for \$109,900, but received no offers. *Gonzalez testimony; Pet'r Ex. 5*.
- b) There are deteriorating residences near the subject property. *E. Gonzalez testimony; Pet'r Ex. 7-8*.
- c) An appraisal report prepared by Ron Schwuchow, licensed appraiser, stated the value of the home was \$94,000 as of January 1, 1999. *E. Gonzalez testimony; Pet'r Ex. 3*. Thus, the assessment of the subject property should be lowered to \$94,000. *E. Gonzalez argument*.

11. Summary of Respondent's contentions in relation to the assessment:

- a) Three comparable properties that have sold average \$50.69 per square foot in market value. Only one of the three comparables is in the subject's neighborhood. The subject is assessed at \$57.91 per square foot. *Spenos testimony; Resp't Ex. 4*.
- b) Lowering the subject's assessment to the average square foot price of the three comparables results in an assessed value of \$118,600. *Spenos testimony*.

Record

12. The official record for this matter is made up of the following:

- a) The Petition, and all subsequent submissions by either party.
- b) The tape recording of the hearing, labeled Lake Co - 793.
- c) Exhibits:
Petitioner Exhibit 1: Form 139L Petition

Petitioner Exhibit 2: Allstate-Deluxe Homeowners Policy Declaration
Petitioner Exhibit 3: Uniform Residential Appraisal Report
Petitioner Exhibit 4: Residential Client Detail Report
Petitioner Exhibit 5: Agent Detail Report
Petitioner Exhibit 6: Notice of Final Assessment
Petitioner Exhibit 7: Picture of Residence Next Door to Subject Property
Petitioner Exhibit 8: Picture of the Residence across the Street from
Subject Property

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject Property Record Card
Respondent Exhibit 3: Subject Property Photograph
Respondent Exhibit 4: Comparable Sales Sheet
Respondent Exhibit 5: Comparable Property Record Cards & Photographs
Respondent Exhibit 6: Height Design Sheet

Board Exhibit A: Form 139L Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign-In Sheet

d) These Findings and Conclusions.

Analysis

13. The most applicable laws are:

- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Bd. Of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E. 2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board....through every element of the analysis”).
- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

14. The Petitioner provided sufficient evidence to support the Petitioner’s contentions. The Respondent did not rebut the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the assessment should be lowered from \$135,500 to \$94,000.
- b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- c) The appraisal submitted by the Petitioner states that the value for the subject property as of January 1, 1999, is \$94,000. The appraisal was prepared by a licensed, certified appraiser. The Petitioner’s listing prices and subsequent offers for the subject property further support the value stated in the appraisal. Therefore, the Petitioner has successfully made a prima facie case of error in the assessment, and the burden shifts to the Respondent to defend the assessment.
- d) The Respondent offered evidence showing that the assessment is too high. In fact, the Respondent, upon an analysis of its own comparable properties, suggested lowering the assessment to \$118,600. However, because only one of the Respondent’s comparables is located in the subject’s neighborhood, the Petitioner’s appraisal serves as better evidence of the value of the subject property.
- e) For the reasons set forth, the Petitioner has made a prima facie case that the Respondent has failed to rebut. As a result, the Board hereby changes the assessment of the subject property to \$94,000.

Conclusion

- 15. The Petitioner made a prima facie case. The Respondent did not rebut the Petitioner’s evidence. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$94,000.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.